

PP

A

v.

SANIN OTHMAN

COURT OF APPEAL, PUTRAJAYA
SURIYADI HALIM OMAR JCA

B

HASAN LAH JCA
SULAIMAN DAUD JCA[CRIMINAL APPEAL NO: J-05-163-09]
26 OCTOBER 2010

C

CRIMINAL LAW: Penal Code - Section 302 - Murder - Prima facie case - Whether established - Robbery attempt by accused ending in accused stabbing deceased - Stab wounds causing deceased's death - Ingredients to be established by prosecution - Whether intention to cause death could be established from seriousness of injuries and manner in which injuries were caused - Whether injuries were accidental and unintentional - Whether intention to cause death or bodily injury can be formulated on the spot - Ample time for accused to formulate intention - Prima facie case established - Penal Code, ss. 300(c) & 302

D

E

EVIDENCE: Witness - Inconsistencies in testimony - Whether inconsistencies affect veracity of accused's evidence - Whether weight of evidence affected - Whether whole testimony ought to be rejected outright

PW14 and her husband (the deceased) were in their shop when the respondent entered and requested for some fishing items. The respondent then walked around the shop and left the shop to pick-up a knife from his motorcycle. A few minutes later he re-entered the shop and went behind the sales counter to where PW14 was and requested a reel of fishing line. While PW14 was bending down to take the requested item the respondent grabbed her mouth from the rear and said "diam-diam rompak" (quiet, robbery). Startled, she kicked the chair beside her and fell. That noise attracted the attention of the deceased who entered the shop to investigate. PW14, when in the course of standing up, saw the respondent stabbing the deceased twice. The respondent then ran out of the shop. PW5 and PW8 who heard PW14's cries for help chased the respondent and apprehend him. The deceased died on the way to hospital. The respondent claimed that he merely wanted to rob but in the course of his robbery attempt, a struggle had ensued between the deceased and him and the injuries were accidentally inflicted

F

G

H

I

- A during the struggle. He denied any intention to cause the death of the deceased. PW14 testified that she saw the respondent stabbing the deceased (hence discounting the suggestion that the stabbing occurred due to the body forcing itself onto the knife, inadvertently caused by the sheer momentum of the sudden lunging forward or tripping).
- B She also denied that the injury was inflicted by a quirk when the deceased had attempted to stand upright. The respondent was originally indicted under s. 302 of the Penal Code (the Code) for causing the death of the deceased. At the close of the case for the prosecution, the charge of murder was amended to one of culpable homicide not amounting to murder and punishable under the 1st limb of s. 304 of the Code. A charge of attempted robbery under ss. 393/397 of the Code was also added. The respondent pleaded guilty to both charges. He was convicted and sentenced accordingly. The prosecution appealed against that decision and the
- C Court of Appeal allowed the appeal and ordered defence to be called under the original charge of s. 302 of the Code. The same trial judge heard the defence and again found the respondent guilty of the lesser charge of s. 304(a) of the Code. The prosecution appealed against this decision.
- D

E **Held (allowing the appeal and convicting the respondent of murder)**
Per Suriyadi Halim Omar JCA delivering the judgment of the court:

- F (1) Since the Court of Appeal pursuant to the first trial had ordered defence to be called, it was incumbent upon the respondent to rebut the prosecution's case, though subject to a maximum evaluation of the whole case by the learned judge. (para 14)
- G (2) Since the respondent was charged for an offence under s. 302 of the Code, the prosecution had to establish: (i) the death of the deceased; (ii) the death was caused by the respondent; (iii) he intended to cause death or intended to cause bodily injury as the respondent knew to be likely to cause the death or if
- H intended to cause bodily injury the injury intended to be inflicted was sufficient in the ordinary course of nature to cause death or the respondent knew that his act was so imminently dangerous and likely to cause death. (para 15)
- I (3) Once the veracity of the respondent's evidence was shown to be doubtful, the whole of his evidence had to be scrutinized with care. However, the doctrine of 'false in one thing false in everything' has to be taken with a pinch of salt as it merely

involves the question of weight to be given to the evidence adduced in a given circumstance. It does not mean that his whole testimony had to be rejected outright. (para 18)

A

- (4) The evidence before the court was more than ample to establish intention. The two injuries on the deceased were caused by a dangerous instrument *ie*, a knife. The injuries were deep and not mere slash wounds. With such wounds, which must have required great force, it would defy logic that the respondent did not intend to kill or cause serious injury on the deceased. (para 19)

B

C

- (5) Intention can be formulated on the spot. The time span spent in the shop, from the time he placed the knife next to the neck of PW14, to the moment when the deceased appeared on the scene were not mere seconds. There was more than ample time for the respondent to formulate his intention to kill, or cause injury to someone, and that injury was sufficient in the ordinary course of nature to cause death in the event anyone got in his way. (para 20)

D

- (6) It was proven beyond reasonable doubt that the respondent had the intention to cause bodily injury to the deceased, and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. The injury was not caused by accident or inflicted unintentionally (s. 300(c) of the Code). (para 25)

E

F

- (7) The fact that the episode began as a robbery attempt but ended with the death of the deceased was of no defence to the murder charge proffered against the respondent. So long as the criminal act fell within the ambit of s. 302 with the intention falling under s. 300 of the Code, in this case s. 300(c), the fate of the respondent was sealed. (para 26)

G

Bahasa Malaysia Translation Of Headnotes

PW14 dan suaminya (si mati) berada dalam kedai mereka bilamana responden memasuki kedai tersebut untuk membeli beberapa alat memancing. Berikutnya responden berligar-ligar di keliling kedai dan selepas itu pergi kepada motosikalnya di luar kedai untuk mengambil sebilah pisau. Beberapa minit kemudian responden memasuki semula kedai dan pergi ke belakang kaunter jualan di tempat PW14 berada dan meminta segulung tali pancing. Apapun,

H

I

- A semasa PW14 membongkok untuk mengambil barang yang diminta, responden telah mencekup mulutnya dari belakang sambil berkata “diam-diam rompak”. Terkejut, PW14 menendang kerusi di tepi beliau dan jatuh. Kebisingan tersebut telah menarik perhatian si mati yang masuk ke kedai untuk menyiasat. PW14, dalam keadaan
- B hendak berdiri, telah melihat responden menikam si mati sebanyak dua kali. Responden kemudian berlari keluar dari kedai. PW5 dan PW8, yang mendengar raungan PW14 meminta pertolongan, mengejar responden dan berjaya menangkapnya. Si mati bagaimanapun meninggal dunia ketika dalam perjalanan ke hospital.
- C Responden berkata bahawa ia hanya ingin merompak, tetapi dalam percubaannya berbuat demikian berlaku pergelutan di antara beliau dan si mati dan kecederaan-kecederaan telah diakibatkan secara tidak sengaja olehnya. Beliau menyangkal mempunyai niat untuk menyebabkan kematian si mati. PW14 memberi keterangan bahawa
- D beliau melihat responden menikam si mati (sekaligus menolak cadangan bahawa tikaman berlaku kerana badan si mati menerjah ke pisau, yang diakibatkan oleh momentum dari badan yang sedang menerkam ke depan atau terjatuh). Beliau juga menolak bahawa kecederaan disebabkan oleh kemalangan bilamana si mati hendak
- E berdiri tegak. Responden pada mulanya dituduh di bawah s. 302 Kanun Keseksaan (“Kanun”) kerana menyebabkan kematian si mati. Apapun, di akhir kes pendakwaan, pertuduhan bunuh telah dipinda kepada pertuduhan homisid salah tidak sampai membunuh yang boleh dihukum di bawah jejari pertama s. 304 Kanun. Di samping
- F itu, satu pertuduhan cuba merompak di bawah ss. 393/397 juga telah dikenakan. Responden mengaku bersalah terhadap kedua-dua pertuduhan dan telah disabit dan dihukum sekadarnya. Pendakwaan merayu terhadap keputusan tersebut dan Mahkamah Rayuan telah membenarkan rayuan dengan memerintahkan supaya pembelaan
- G dipanggil bagi pertuduhan asal di bawah s. 302 Kanun. Hakim bicara yang sama telah mendengar pembelaan dan sekali lagi mendapati responden bersalah atas pertuduhan lebih ringan tersebut di bawah s. 304(a) Kanun. Pendakwaan merayu terhadap keputusan tersebut.
- H **Diputuskan (membenarkan rayuan dan mensabitkan responden atas kesalahan bunuh)**
Oleh Suriyadi Halim Omar HMR menyampaikan penghakiman mahkamah:
- I (1) Oleh kerana Mahkamah Rayuan memerintahkan pembelaan dipanggil ekoran dari perbicaraan yang pertama, maka menjadi

- tanggungjawab responden untuk menyangkal kes pendakwaan, walaupun tertakluk kepada penilaian maksima keseluruhan kes oleh hakim bicara. A
- (2) Oleh kerana responden dituduh di bawah s. 302 Kanun, pendakwaan perlu membuktikan: (i) kematian si mati; (ii) kematian disebabkan oleh responden; (iii) responden berniat untuk menyebabkan kematian atau berniat melakukan kecederaan badan yang diketahuinya berkemungkinan akan menyebabkan kematian atau jika ia berniat untuk menyebabkan kecederaan badan, kecederaan badan yang diniatkan tersebut memadai dalam perjalanan biasa alam semulajadi untuk menyebabkan kematian ataupun responden mengetahui bahawa tindakannya itu adalah sangat berbahaya dan berkemungkinan boleh menyebabkan kematian. B C
- (3) Sebaik kesahihan cerita responden didapati meragukan, maka seluruh keterangannya harus diperhalusi dengan penuh teliti. Bagaimanapun, doktrin “palsu pada satu sudut maka palsuah segalanya” harus dipertimbang secara berhati-hati kerana ia hanya melibatkan persoalan penekanan yang harus diberi kepada keterangan yang dikemukakan dalam sesuatu keadaan. Ianya tidak bermakna bahawa seluruh keterangannya harus ditolak mentah-mentah. D E
- (4) Keterangan yang ada di hadapan mahkamah lebih dari mencukupi untuk membuktikan niat. Dua kecederaan pada badan si mati adalah disebabkan oleh senjata berbahaya, iaitu pisau. Kecederaan adalah dalam dan bukan semata-mata ‘slash wounds’. Dengan kecederaan-kecederaan sedemikian rupa, yang memerlukan kuasa yang kuat, adalah tidak logik bahawa responden tidak berniat untuk membunuh atau menyebabkan kecederaan serius kepada si mati. F G
- (5) Niat boleh wujud dalam sekelip mata. Tempoh masa yang responden habiskan di kedai, bermula dari masa beliau meletakkan pisau dekat leher PW14, hingga ke masa si mati mncul di tempat kejadian bukanlah berlaku dalam beberapa saat. Terdapat masa yang mencukupi untuk responden mewujudkan niatnya untuk membunuh, atau menyebabkan kecederaan kepada seseorang di mana kecederaan tersebut mencukupi dalam perjalanan biasa alam semulajadi untuk menyebabkan kematian sekiranya ada mana-mana orang yang menghalangnya. H I

- A (6) Telah dibuktikan di luar keraguan munasabah bahawa responden mempunyai niat untuk menyebabkan kecederaan badan ke atas si mati, dan kecederaan badan yang diniatkan itu mencukupi dalam perjalanan biasa alam semulajadi untuk menyebabkan kematian. Kecederaan tidak disebabkan oleh kemalangan atau dilakukan secara tidak sengaja (s. 300 Kanun).
- B
- (7) Fakta bahawa episod bermula dengan percubaan merompak tetapi berakhir dengan kematian si mati bukanlah satu pembelaan terhadap pertuduhan bunuh yang dihadapkan ke atas responden. Selagi perbuatan jenayah terangkum di bawah s. 302 dan niat terangkum di bawah s. 300 Kanun, dalam kes ini s. 300(c), nasib responden sudah pun muktamad.
- C

Case(s) referred to:

- Chee Kim Seng & Anor v. PP* [1961] 1 LNS 17 HC (*refd*)
- D *Balachandran v. PP* [2005] 1 CLJ 85 (*refd*)
- Mat v. PP* [1963] 1 LNS 82 HC (*refd*)
- Mohamad Radhi Yaakob v. PP* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC (*refd*)
- Mohamed Ali v. PP* [1962] 1 LNS 99 HC (*refd*)
- E *Mohamed Yasin Hussin v. PP* [1976] 1 LNS 75 PC (*refd*)
- Muniamdy Subramaniam v. PP* [2006] 6 MLJ 623 (*refd*)
- PP v. Foong Chee Cheong* [1969] 1 LNS 128 HC (*refd*)
- PP v. Neoh Bean Chye & Anor* [1974] 1 LNS 122 HC (*refd*)
- PP v. Tan Joo Cheng & Ors* [1990] 2 CLJ 890; [1990] 3 CLJ (Rep) 891 HC
- F *Rajwant Singh v. State of Kerala AIR* (53) [1966] SC 1974
- Saad Abas & Anor v. PP* [1998] 4 CLJ 575 CA
- Sainal Abidin Mading v. PP* [1999] 4 CLJ 215 CA
- Sucha Singh v. State of Punjab* [2003] Cri LJ 3876
- Tan Buck Tee v. PP* [1961] 1 LNS 130 HC
- G *Tan Cheow Bock v. PP* [1991] 1 LNS 37 CA
- Tham Kai Yau & Ors v. PP* [1976] 1 LNS 159 FC
- Virsa Singh v. State of Punjab AIR* [1958] SC 465

Legislation referred to:

Penal Code, ss. 300(c), 302, 304(a), 393, 397

H**Other source(s) referred to:**

Ratanlal & Dhirajlal's Law of Crimes, 24th edn, vol 11

For the appellant - Awang Armadajaya Awang Mahmud; DPP

For the respondent - K Sandrasegaran; M/s Tay, Bernard & Cheong

I

[Appeal from High Court; Muar; Criminal Trial No: 45-4-2002]

Reported by Amutha Suppayah

JUDGMENT

A

Suriyadi Halim Omar JCA:

[1] Sanin bin Othman (the respondent) was originally indicted for causing the death of one Lim Meng Lee (I/C 731128-01-5279) on 19 January 2001 at about 12.20pm to 12.30pm in a shop at No. 89, Jalan Chengal, Taman Makmur, Batu Pahat, Johor Darul Takzim, and thus had committed an offence under s. 302 of the Penal Code (the Code). At the close of the case for the prosecution, the respondent submitted that there was only a case to answer under s. 304 but not under s. 302 of the Code. His intention was only to rob and not to kill or to cause such bodily injury likely to cause death. Furthermore his demeanour was inconsistent with the intention under s. 300 of the Code.

B

C

[2] At the end of the case for the prosecution, the charge of murder was indeed amended to one of culpable homicide not amounting to murder and punishable under the 1st limb of s. 304 of the Code (the first trial). A charge of attempted robbery under s. 393/397 of the Code was also added. The respondent pleaded guilty to both charges. He was convicted and sentenced to 12 years imprisonment for the amended charge and six years imprisonment and six strokes of the rotan for the additional charge. Both sentences were ordered to run concurrently. The prosecution appealed against the decision and the Court of Appeal (the COA) allowed the appeal on 19 January 2009. The COA ordered defence to be called under the original charge of s. 302 of the Code.

D

E

F

[3] When defence is directed to be called by an appeal court the trial judge must accept that a *prima facie* case has been proven. It is as if the defence was called by the learned judge himself (*Saad Abas & Anor v. PP* [1998] 4 CLJ 575). Only after he has gauged the total evidence adduced, inclusive of all the evidence adduced at the prosecution's stage, and tested as against the defence evidence may the fate of the accused person be decided by the court. In short there will be a maximum evaluation of the whole evidence at the close of the defence.

G

H

[4] In this appeal the same learned judge who heard the defence, after conducting the trial to fruition, found the respondent guilty of the lesser charge of s. 304(a) of the Code (the second trial). The Public Prosecutor filed an appeal and this court heard the appeal.

I

A We allowed the appeal and set aside the High Court order whereupon the respondent was found guilty of murder. We convicted him and accordingly sentenced him to death.

[5] The facts of the case, which are as follows, will explain why we found him guilty of the charge of murder. On 19 January 2001
B PW14 and her husband ie, the deceased were in their shop, registered as Perniagaan Eng Hong. At about 12.20pm to 12.30pm the respondent parked his motorcycle in front of the shop and entered it. He requested for fish nets and a small box to keep
C fishing hooks. PW14 placed the items on the L-shaped sales counter. The respondent then went behind the sales counter, looked at some fishing lines, and then walked to the back of the shop. He pointed to a room and asked whether that was the office and PW14 answered in the affirmative. The deceased was inside the office at that time. PW14 then asked the respondent if he wanted anything
D else and he replied, “tunggu sekejap” (wait for awhile) and then walked out of the shop. A few minutes later he re-entered the shop. He also replied, “tengok-tengok” (looking around) when PW14 again asked whether he wanted anything else. The respondent then went behind the sales counter to where PW14 was and requested a
E small reel of fishing line. While PW14 was bending down to take the requested item the respondent came from the rear and suddenly grabbed her mouth. She felt a knife on the right side of her neck and heard the respondent utter, “diam-diam rompak” (quiet,
F robbery). Startled, she kicked the chair beside her and fell. That noise attracted the attention of the deceased who thereupon entered the shop to investigate. PW14, when in the course of standing up, saw the respondent stabbing the deceased twice.

[6] The respondent then ran out of the shop. Both the deceased, who was then bleeding profusely, and PW14 cried out for help. PW5 who had stopped his motorcycle at a traffic junction nearby heard a female voice shouting “rompak” (robbery). He saw the respondent running very fast across his path. PW8 who was also at the scene assisted PW5 to apprehend the respondent by giving chase on their
G motorcycles. The respondent ran to a lane behind a petrol station which was a cul-de-sac and was trapped. He squatted and remained silent. PW8 heard the respondent saying, “Allah apa yang telah aku lakukan” (Allah what have I done). He was then caught and handed
H over to PW9, a police officer, who admitted hearing the respondent say, “kenapa aku buat” (why did I do it).
I

[7] The deceased died on the way to hospital. The police found a bent knife (P31A) at the pavement (colloquially referred to as the '5 foot way') and another knife (P30A) inside the shop. PW16 who conducted the post mortem found 2 stab wounds on the deceased. One stab wound measured 4.5cm x 2cm, was located just left of the nipple and was 14cm deep (nearly 6 inches), directed towards the back and right. The other stab wound was on the upper right back located below the neck and 5cm to the right. That wound measured 5.5cm x 1.5cm and was 13.5cm deep, directed downwards. The doctor was quite graphic when he testified that the heart was cut, the right lung pierced, the liver was cut and the right diaphragm also cut. In no uncertain terms this witness said that either one of the stabbing was fatal.

A

B

C

[8] With the evidence being made available, whereas the wounds were caused by a sharp implement, and two knives being recovered on the scene, with one being bent and the other straight but covered with blood, there was no doubt that he had been stabbed with the latter. The knife covered with blood was P30A, an implement that had all the features of an army knife (Rambo knife) and certainly menacing looking.

D

E

[9] As regards how the wounds could have been inflicted, PW16 testified that the rear wound would have been caused by 'knife to body, rather than the other way round'. In a gist, even though it was possible for the front wound to have been inflicted by the deceased having lunged forward, by no account could that suggestion be applicable for the rear wound. PW14 put to rest all speculations when she denied that the deceased had lunged forward or even tripped. She clearly saw the respondent stabbing the deceased (hence discounting the suggestion that the stabbing occurred due to the body forcing itself onto the knife, inadvertently caused by the sheer momentum of the sudden lunging forward or tripping). She likewise denied that the rear injury was inflicted by a quirk when the deceased had attempted to stand upright. In short the wounds were never inflicted because of some accidental stabbing. She categorically stated that the deceased was never at any time armed as opposed to the respondent, who even though had lost the first knife (P31A), had rearmed himself with P30A ie, the very knife used to stab the deceased twice.

F

G

H

I

- A [10] With a *prima facie* case having been made out, and the COA directing that the defence be called, it was then up to the respondent to adduce rebuttal evidence, an evidential burden that rested on him to raise a reasonable doubt (*Balachandran v. PP* [2005] 1 CLJ 85). In his defence the main thrust of his testimony, B *inter alia* reads as follows:

Saya nampak ada duit dalam mesin duit. Baru teringin makan, Nampak. Saya fikir perempuan seorang, baru saya pergi ke motor mengambil pisau.

C ...

Setelah mengambil pisau saya masuk balik ke dalam kedai pancing. Saya suruh wanita mengambil barang di bawah Almari. Semasa wanita bercangkung, saya menutup mulut wanita itu. Saya di tepi wanita, sebab tempat sempit. Pisau saya di leher wanita.

D

...

Saya cuba lari, tetapi lelaki itu menuju kepada saya. Terjadi satu pergelutan kecil, sampai yang dia dapat pisau yang saya pegang. Dia cuba menikam saya.

E

Saya bergelut lagi. Saya masuk tangan saya ke dalam almari, mencapai sesuatu, macam, waktu itu saya tak pasti. Saya tolak lelaki, saya cuba lari. Lelaki menghadap saya dengan belakangnya ke pintu besar. Saya lari, dan lelaki terus bangun. Dengan itu saya tertikam lelaki di bahagian belakang kanan. Lelaki pusing dan terus menerpa saya. Pisau itu terkena lagi. Saya terlampau takut, saya terus campak pisau yang saya pegang. Saya tak pegang pisau selepas tikaman pertama.

F

- G [11] His other evidence went along the line that he was remorseful and did not intend to kill the deceased.

H

[12] The learned judge when reducing the charge to that of s. 304(a) of the Code had authored amongst others that the defence was sprung at the earliest of stages ie, at the stage of the cross-examination of SP9. The respondent merely wanted to rob but in the course of his robbery attempt a struggle had ensued between the deceased and him at or about the sales counter. The injuries were accidentally inflicted during the struggle. The pool of blood at the sales counter fitted in with the defence that his getaway was barred when attempting to get out. On the facts, the initial intention of I the respondent was never to kill but with matters spiralling out of

control, he had grabbed P30A from the sales counter and inflicted those injuries. The learned judge said there was a possibility that there was insufficient time for him to form the specific intention within the context of murder. That being so there was a lingering doubt on the intention that had been inferred in relation to murder.

A

B

[13] Specifically on the issue of intention the learned judge wrote:

At the close of the prosecution case, the court found that the accused had committed the act. The thorny issue was the intention which was inferred, but which the accused contested. But at the end of the entire case, could that intention still be steadfastly inferred? The accused denied he had the intention to cause death, and or had the intention to cause bodily injury sufficient in the ordinary course of nature to cause death. His explanation was that he was impeded as he attempted to flee, that a struggle ensued between him and the deceased, that he grabbed P30A from the sales counter, and that those 2 stab wounds were inflicted either accidentally during the struggles or were inflicted with the intention only to make his getaway but not to kill. That was about the purport and net effect of the defence story.

C

D

E

[14] Since the Court of Appeal pursuant to the first trial had ordered defence to be called, it was now incumbent upon the respondent to rebut the prosecution's case, though subject to a maximum evaluation of the whole case by the learned judge. Since a maximum evaluation is mandated, let alone an appeal is merely a continuation of the trial and throws open all the evidence to re-examination, let us review the evidence adduced at the stage of the prosecution justifying the calling of the defence, to be followed by testing it against the rebuttal evidence if any (*Muniandy a/l Subramaniam v. Public Prosecutor* [2006] 6 MLJ 623).

F

G

[15] But before any testing is done, since the respondent was charged for an offence under s. 302 of the Penal Code, the prosecution must establish certain ingredients. The latter must establish the death of the deceased, the death was caused by the respondent, he intended to cause death or intended to cause bodily injury as the respondent knows to be likely to cause the death or if intended to cause bodily injury the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or the respondent knew that his act was so imminently dangerous and likely to cause death (s. 300 of the Penal Code).

H

I

- A [16] At the stage of the prosecution it was established that:
- i. the respondent stabbed the deceased;
 - ii. he was stabbed with a knife which is a deadly weapon as factually found by the learned judge. The deliberate use of a dangerous weapon leads to the irresistible inference of an intention to cause death (*Sainal Abidin Mading v. PP* [1999] 4 CLJ 215; *Tham Kai Yau & Ors v. Public Prosecutor* [1976] 1 LNS 159);
- B
- C iii. the stabbings occurred at vital parts of the body. The Federal Court in *Tan Buck Tee v. Public Prosecutor* [1961] 1 LNS 130 had occasion to state:
- D
- There was the body with the five appalling wounds on it, wounds penetrating to the **heart and liver**, which must, have been caused by violent blows with a heavy sharp instrument like an axe. In the absence of anything else, whoever inflicted those blows must have intended to kill the person on whom they were inflicted ... (emphasis added);
- E iv. the 2 stab wounds were deep (about 6 inches) indicating the application of great force and a desire to do great harm. None were lacerations or cuts normally associated with one flaying a knife around when attempting to escape;
- F v. there were 2 stab wounds, either of which was sufficient to cause death. In *Public Prosecutor v. Tan Joo Cheng & Ors* [1990] 2 CLJ 890; [1990] 3 CLJ (Rep) 891 while committing a robbery the appellant had stabbed the deceased once on the neck. Despite the singular stab wound inflicted he was nevertheless found guilty of murder. The emphasis in this case
- G was not the number of stabs but rather the intention to strike at a vital spot;
- vi. the deceased was never armed, and the issue of self defence on the part of the respondent, could never be raised;
- H
- vii. even though he had lost the knife, which he took from his motorcycle, he had no compunction in grabbing another one;
- viii. the grabbing of another knife, if not to pursue his criminal intention to rob, was certainly to assist him escape no matter the cost; and
- I
- ix. he had every chance of escaping from the shop without the need to hurt anyone.

[17] Let us now sift through some of the evidence adduced by the respondent at the defence stage especially the verbatim evidence supplied above. Testing it against the evidence adduced at the prosecution's stage, these falsities were detected:

i. the respondent stated that while struggling with the deceased the latter had managed to grab the knife from him. Yet SP14 stated that the deceased never at any stage was in possession of any weapon. Even though she is an interested witness her evidence is entitled to credence until there is cogent evidence adduced for disbelief (*Public Prosecutor v. Foong Chee Cheong* [1969] 1 LNS 128). With no negative evidence that could have led to the rejection of her evidence it was no surprise that the COA called the defence;

ii. on a supposition that the knife was grabbed from the respondent in a close quarter fight, surely he would have suffered cuts or lacerations. Yet SP17 who took swabs of the respondent found no cuts on him. If the deceased had managed to grab the knife from the respondent the body at the mortuary would have been the respondent instead of the deceased;

iii. the sequence of the respondent's narration was that he stabbed the deceased first from the rear. The improbability of this story is made obvious by his own admission that he ran first, followed by the deceased standing up. Surely had the respondent been in the process of running away, and the deceased left behind as admitted, it would have been impossible for the rear stab to have been inflicted in the way the respondent described.

It must be highlighted that our approach when coming to the conclusion of the improbability of the respondent's story had taken cognizance of the principles of *Mat v. Public Prosecutor* [1963] 1 LNS 82. Had we believed the story of the respondent the appeal would have been dismissed at the outset. On the other hand there was no necessity for us to believe his story to earn an acquittal. All that was required of him was to raise a reasonable doubt (*Mohamad Radhi bin Yaakob v. Public Prosecutor* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311);

iv. then came the second stabbing. It was supposed to occur when the deceased turned around ie, after the stab from the rear. Yet in no uncertain term, the respondent said that after the first

- A stabbing ie, the rear wound, he never stabbed again (Saya tak pegang pisau selepas tikaman pertama). If he had released the knife how then did the second stabbing materialize; and
- B v. the respondent, had behaved unreasonably as in the circumstances of the case he must surely know that the first stab wound, let alone followed by another fatal wound, would kill the deceased (*Mohamed Ali v. Public Prosecutor (infra)*). It must be clarified that it is unnecessary for us to conduct an enquiry to show that the respondent intended the precise injuries caused by his knifing of the deceased or he had medical knowledge of the anatomy of the deceased and that the stabbings would cut or pierce the heart, lung, liver and the diaphragm. If such a demand were put on the DPP to establish anatomical knowledge first before successfully establishing intention only doctors would be convicted for murder. What is required from a trial judge is a broad based and common-sense enquiry (*Virsa Singh v. State of Punjab* AIR [1958] SC 465; *Mohamed Yasin bin Hussin v. Public Prosecutor* [1976] 1 LNS 75).
- C
- D
- E [18] The illustrated issues, amongst others, merely go toward establishing the need to sieve the evidence of the respondent with care and not to accept it at its face value, bearing in mind some falsity has been detected in his evidence. Once his veracity has been shown to be doubtful the whole of his evidence must be
- F scrutinized with care. But it must be stressed that the doctrine of ‘false in one thing false in everything’ has to be taken with a pinch of salt as it merely involves the question of weight to be given to the evidence adduced in a given circumstance. It does not mean that his whole testimony must be rejected outright. His evidence
- G must be appraised hence the need to separate the grain from the chaff eg, the fact that the respondent took P30A from the sales counter and stabbed the deceased are admissions, and thus admissible evidence, but not the exculpatory parts (*Mohamed Ali v. Public Prosecutor* [1962] 1 LNS 99; *Sucha Singh v. State of Punjab* [2003] Cri. LJ 3876).
- H
- I [19] Since it is no easy task to establish the ingredient of intention it thus has to be established by inferences arrived at from the evidence made available. The evidence before the court was more than ample to establish that ingredient. To reiterate, the two injuries were caused by a dangerous instrument ie, a knife. The injuries were deep and never mere slash wounds. With such wounds,

which must have required great force, it would defy logic that the respondent did not intend to kill or cause serious injury on the deceased (*Tan Buck Tee v. Public Prosecutor (supra)*).

A

[20] It could never be overly emphasized that intention can be formulated on the spot. The time span spent in the shop, from the time he placed the knife next to the neck of PW14, to the moment when the deceased appeared on the scene were not mere seconds. There was more than ample time for the respondent to formulate his intention to kill, or cause injury to someone, and that injury was sufficient in the ordinary course of nature to cause death in the event anyone gets in his way.

B

C

[21] *Ratanlal & Dhirajlal's Law of Crimes*, 24th edn., vol 11, Bharat Law House, New Delhi had authored:

... If from the intentional act of injury committed the probability of death resulting is high, the findings should be that the accused intended to cause death or injury sufficient in the ordinary course of nature to cause death and the conviction should be murder.

D

[22] In *Rajwant Singh v. State of Kerala* AIR (53) [1966] SC 1974 at 1978 the court held:

E

As was laid down in *Virsa Singh v. State of Punjab* ... For the application of this clause it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be **sufficient to cause death one test is satisfied**. Then it must be proved that there was an intention to inflict that very injury and not some other injury and **that it was not accidental or unintentional**. If this is also held against the offender the offence of murder is established (emphasis added).

F

G

[23] A case in point is *Tan Cheow Bock v. Public Prosecutor* [1991] 1 LNS 37, where in the course of committing a robbery death was inflicted on the victim, culminating in the court finding the accused person (appellant) guilty of murder. The deceased was a housewife living together with other occupants whilst the appellant was a neighbour. One of the occupants of the house later found the deceased dead with a knife stuck in her mouth. The appellant admitted in evidence that he went to the deceased's house to commit robbery, but due to matters getting out of hand, thrust the knife into the deceased's mouth thus causing her death. The court opined that so long as the appellant did an act which caused the

H

I

- A death of the deceased, that the said act was done with the intention of causing bodily injury, that the injury caused was not accidental or otherwise unintentional and was sufficient in the ordinary course of nature to cause death, no further requirement was demanded. With the above ingredients established, and the trial
- B judge having found the injury was caused intentionally as opposed to an accident, the conviction of murder was affirmed. In a gist even though the episode began as a robbery, but ended as a murder case, so long as the requirements of s. 300(c) of the
- C Code are complied with, a conviction for an offence of s. 302 of the Code will follow (see also *Public Prosecutor v. Tan Joo Cheng & Ors* [1990] 2 CLJ 890; [1990] 3 CLJ (Rep) 891, *Public Prosecutor v. Neoh Bean Chye & Anor* [1974] 1 LNS 122).

- [24] The last two matters to be resolved are his weak disposition/
- D personality and the issue of the deceased preventing the respondent from escaping the scene of the crime which culminated in his death. On the first matter, to say that the respondent was of weak disposition (as he testified that he was frightened when the deceased appeared hence his reaction) and unable to control
- E his emotion would fly against the grain of evidence. The fact that the respondent asked certain questions followed by good evasive answers when probed by PW14, striding out of the shop to pick up a knife from his motorbike after his mind to rob was made up, followed by him springing into action, merely goes to show his
- F controlled disposition. On the second matter, in the circumstances of the case it is an absurd defence to allege that the stoic deceased was to be defaulted for impeding the escape route, with no fault to be assumed by the respondent by the death. To agree to such a defence would tantamount to accrediting a murderer an
- G escape-chute whenever death ensues in any given situation.

- [25] We were satisfied beyond reasonable doubt that the respondent had the intention to cause bodily injury to the deceased, and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death, what
- H with the injury not caused by accident or inflicted unintentionally (s. 300(c) of the Code). PW16 in evidence had in crystalline terms testified that those wounds could not have been accidentally caused (*Chee Kim Seng & Anor v. Public Prosecutor* [1961] 1 LNS 17). PW14's evidence also put to rest any lingering doubt as to
- I whether the stabbings were accidental, unintentional or otherwise.

[26] The fact that the episode began as a robbery attempt but ended with the death of the deceased was of no defence to the murder charge proffered against the respondent. So long as the criminal act falls within the ambit of s. 302 with the intention falling under s. 300 of the Code, in this case s. 300(c), the fate of the respondent was sealed. We were satisfied that the evidence submitted by him had failed to rebut the prosecution's case and as such the prosecution had successfully established a case beyond reasonable doubt for the charge of murder. It was based on these grounds that this court allowed the appeal and set aside the order of the High Court. We accordingly found him guilty and convicted him under the original charge of murder. With there being only one sentence for murder we sentenced him to death.

A

B

C

D

E

F

G

H

I